



ORIGINAL

June 14, 1999

Lon C. Levin  
Vice President and  
Regulatory Counsel

PHONE: 703 758 6150  
FAX: 703 758 6189  
EMAIL: lon.levin@ammobile.com

## VIA HAND DELIVERY

Ms. Magalie Roman Salas  
Secretary  
Federal Communications Commission  
445 12th Street, S.W.  
TW-B204  
Washington, D.C. 20554

RECEIVED

JUN 15 1999

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

Re: *Ex Parte* Presentation  
File Nos. 47-SAT-WAIV-97; 548-SSA-97(50); 1281-DSE-P/L-96  
(Call Sign E960327); ITC-95-341; IB Docket No. 96-111/CC Docket  
No. 93-23, RM-7931; CC Docket No. 87-75; IB Docket No. 95-41; 730-  
DSE-P/L-98; 647-DSE-P/L-98; 1217-SSA-98

Dear Ms. Salas:

In two recent *ex parte* filings, TMI Communications and Company, L.P. ("TMI") made several arguments in connection with the above-referenced applications that require a response.

1. TMI claims that several U.S. government agencies have expressed a strong interest in using TMI's services because AMSC's offerings do not meet their needs. March 15 *ex parte*, p. 2, n.3. There is no evidence of this. In fact, the Federal Aviation Administration and the National Oceanic and Atmospheric Administration, both of which TMI mentions as examples, have been conducting tests using AMSC's system. See AMSC Letter re: TMI Request for Confidentiality, FCC File No. 730-DSE-P/L-98, p. 2 (December 17, 1998). The FCC decision that TMI cites, *Satcom Systems, Inc.*, 13 FCC Rcd 13507 (Int'l Bur. 1998), fails to confirm that U.S. government agencies either have any such interest or have any aversion to the use of AMSC's system. The simple fact is that AMSC's satellite is capable of providing any service that TMI's satellite is capable of providing.

2. TMI claims that AMSC's existing users that have opposed TMI's application have *de facto* monopolies in their market niches. March 15 *ex parte*, p. 2, n. 2. The truth is that AMSC operates its space segment as a common carrier, as it is required to do under the Commission's rules. Thus, anyone who wants to provide service in the U.S. can do so using AMSC's satellite.

3. TMI claims that the recent Inmarsat aeronautical order (*Report and Order and Authorization*, CC Docket No. 87-75, FCC 98-262 (October 23, 1998) (recon. pending) found that the L-band coordination process agreed to in Mexico City in 1996 is workable. March 15 *ex*

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RESTON, VIRGINIA 20191-5416

703 758 6000  
FAX 758 6111

*parte*, pp. 3-4. In fact, the order relied on a finding that "the amount of spectrum that would be required for Inmarsat to provide [aeronautical] service in connection with international flights in the United States should be minimal given the limited number of aircraft in international flight operating within U.S. airspace." *R&O&A*, para. 19. Moreover, the Commission has permitted the use of Inmarsat to provide international aeronautical service since the time of AMSC's original licensing in 1989. In contrast, applicants proposing the use of TMI's satellite have sought authority to operate no less than 340,000 mobile terminals.

4. TMI claims that AMSC has exaggerated the impact of Japan's MTSAT on the L-band coordination. March 15 *ex parte*, pp. 4-5. Again, TMI is wrong. MTSAT's demand for 2 MHz for an aviation safety system from the 14 MHz in the upper L-band (14% of the total available) will have a significant effect on the coordination process. While MTSAT's service area is primarily over the Pacific Ocean, TMI ignores that MTSAT's global beam and the sidelobes of its spot beams overlap significantly with the beams of AMSC's system. The few degrees of additional separation that TMI claims ease AMSC's coordination with MTSAT in fact are insignificant since the systems being coordinated use mobile terminal antennas with very broad beams. Finally, although MTSAT's stated spectrum requirement of 2 MHz is for the end of system life, its near-term stated requirement for spectrum is at least 1.7 MHz.

5. TMI's counsel claims that AMSC's concerns about the impact of Kitcomm's proposed system on the L-band coordination are misleading because Kitcomm is a non-geostationary system that proposes to operate at 1525-1530/1626.5-1631.5 MHz. March 15 *ex parte*, p. 5, n. 12. Again, TMI's counsel is demonstrating its ignorance of the coordination process. Spectrum is spectrum, whether it is used by a geostationary system or a non-geostationary system. As AMSC and others have shown, the operation of Kitcomm's proposed system would reduce the spectrum available to the five operators participating in the North American L-band coordination. *See, e.g.*, Opposition of AMSC, File No. 85-SAT-LOI-98, pp. 4-5 (August 19, 1998). Kitcomm proposes to operate in the same portion of the band in which Inmarsat and Solidaridad operate. Under the present arrangement, those systems would need to seek other spectrum in the bands used by AMSC and TMI if a system such as Kitcomm begins operating.

6. TMI claims that it will not need more spectrum in order to provide service in the United States. April 29 *ex parte*, p. 2. This statement only adds further support to what should be obvious -- TMI, which so far has authority only to serve Canada, has been warehousing spectrum through the annual coordination meetings in order to have the capacity to provide service in the United States. The Commission must not accede to this strategy, which would be at the expense of the licensee on whose behalf the Commission is obligated to try to coordinate access to 10 MHz.

7. TMI argues that the earlier grant of authority to Comsat to use third-generation Inmarsat satellites (*Comsat Corp.*, 11 FCC Rcd 7953 (Int'l Bur. 1996)) is consistent with a grant of TMI's application. April 29 *ex parte*, pp. 2-3. In fact, the decision cited by TMI supports AMSC's position. In the decision, the Bureau found, as is still the case, that the parties to the agreement

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had been "unable to complete long-term coordination" and instead were operating pursuant to only a "short-term solution." *Comsat Corp.* at para 37. The Bureau went on to say that "[w]e note that this authorization does not permit Comsat to provide any domestic aeronautical or land mobile services except as currently permitted by Commission policies."

8. TMI hints that the Canadian government may revoke Iridium Canada's authorization if the Commission does not approve TMI's application. April 29 *ex parte*, p. 5. TMI, however, cites no authority for this threat. There is no evidence in the record that the Canadian government would take such action. Iridium, which TMI seems interested in protecting, has not expressed any such fear to the Commission. Indeed, Iridium and Globalstar have opposed the use of TMI to provide service in the United States. Efforts such as that of TMI to misuse the Basic Telecom Agreement are precisely the kind of efforts that the Commission must stand firm against. For over twelve years the FCC has consistently and unanimously found that there is only enough spectrum to permit the licensing of a single system in the MSS L-band to provide domestic land mobile service. Any reversal of that policy in an attempt to appease unsubstantiated threats of trade retaliation will only subject the Commission to repeated extortion in other, similar contexts.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Lon C. Levin".

Lon C. Levin

cc: Roderick Porter  
Thomas Tycz  
Fern Jarmulnek  
Cassandra Thomas  
Linda Haller  
Jennifer Gilsenan  
Ari Fitzgerald  
Daniel Connors  
Paul Misener  
Peter Tenhula  
Karen Gulick  
Susan Steiman  
Robert Calaff  
Ron Repasi  
Harry Ng



TECHNICAL CERTIFICATION

I hereby certify that I am the technically qualified person responsible for preparation of the engineering information in the foregoing Ex Parte Presentation, that I have reviewed the technical information in the foregoing Ex Parte Presentation, and that it is complete and accurate to the best of my knowledge and belief.

By: Richard O. Evans  
Richard O. Evans  
Senior Scientist  
AMSC

Date: June 14, 1999

10802 PARKRIDGE BOULEVARD 703 758 6000  
RESTON VIRGINIA 20191-3416 FAX 703 6111